CONSTITUTIONAL LAW—INTERSTATE COMMERCE—STATE REGULATION OF GAS RATES.—The plaintiff company piped natural gas from its wells in Pennsylvania directly to its consumers in New York. The Public Service Commission of New York proposed to fix the gas rates to be charged the consumer. The plaintiff sued out a writ of prohibition, alleging that the attempted regulation was an interference with interstate commerce. *Held,* that the writ should be vacated, because the regulation was local and in a field which Congress had not occupied. *Pennsylvania Gas Co. v. Public Service Commission* (1920) 40 Sup. Ct. 279.

It is well settled that interstate transmission of oil or gas by pipe line is interstate commerce. *West v. Kansas Natural Gas Co.* (1911) 221 U. S. 229, 31 Sup. Ct. 564. And this is true where the pipe line owner also owns the commodity transmitted. *Pipe Line Cases* (1914) 234 U. S. 548, 34 Sup. Ct. 956. It is generally stated that a transaction remains interstate commerce while the goods remain in the "original packages." *Leisy v. Hardin* (1890) 135 U. S. 100, 10 Sup. Ct. 681 (state statute forbidding sale of liquor held invalid). The principal case held gas to be the subject of interstate commerce up to and including its sale to the consumer. But the decision was carefully distinguished from the case where an intervening local concern received the gas and itself dealt with the consumer. The gas was said to have there lost its interstate character and become wholly subject to state regulation. *Public Utilities Commission v. Landon* (1919) 249 U. S. 236, 39 Sup. Ct. 268. It is submitted that any attempt to draw an exact line where federal control ends and state control begins is generally both difficult and misleading. *Cf. Western Union v. Foster* (1918) 247 U. S. 105, 38 Sup. Ct. 438 (interstate telegrams); *cf. Hall v. Geiger-Jones Co.* (1917) 242 U. S. 539, 37 Sup. Ct. 217 (interstate commerce in stocks). Films though in their "original packages" in the hands of the consignee, have been forbidden exhibition by state censorship regulations. *Mutual Film Corporation v. Ohio Industrial Commission* (1915) 236 U. S. 230, 35 Sup Ct. 387. It is enough to say the state may regulate where Congress has not acted, if the subject does not require national uniformity. See (1920) 29 YALE LAW JOURNAL, 456. But "the federal power is paramount and continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character." See *Welton v. Missouri* (1876) 91 U. S. 275, 282. For an excellent discussion of the power of a state to change the rates of a public service corporation established by contract, see Burdick, *Regulating Franchise Rates* (1920) 29 YALE LAW JOURNAL, 589.

CONTRACTS—ENTIRE OR SEVERABLE—INTENT OF PARTIES.—The defendant contracted to build a sea-wall for the plaintiff city. Payment was to be made in installments estimated on the basis of each cubic yard of excavation, rip-rap and fill accepted by the city engineer each month, and a balance on completion. A stipulation placed the risk of loss of work and material on the defendant. When the structure was nearly complete, a storm seriously damaged the wall. The defendant refused to make repairs, claiming that the contract was severable and that the stipulation did not apply to work performed and accepted. The plaintiff sued to recover damages for this refusal. *Held,* that the plaintiff should recover. *City of Bridgeport v. T. A. Scott Co.* (1920, Conn.) 109 Atl. 162.

After partial performance the entirety or severability of a contract becomes a very important factor in determining the promisor's position. Has he a right to all or part of the price? Has he the privilege of retaining it after payment, when he becomes unwilling or unable to continue, or when the works are destroyed? Is he under a duty to complete performance or answer in damages for breach? In deciding any one of these issues the decisions of the courts as to entirety or severability have been the same upon similar facts. The cases

generally agree that the intention of the parties determines whether or not the contract is entire. The intention is to be gathered from the language used and the nature of the subject-matter. See *Dick v. Riddle* (1909) 139 Mo. App. 584, 589, 123 S. W. 486, 487; see *Hodson-Feenaughty Co. v. Coast Culvert and Flume Co.* (1919, Ore.) 178 Pac. 382, 388. Where the performance, left incomplete by the promisor, required further expenditure of work or materials to fit it to the purpose designed by the promisee, the contract was held entire. *School District v. Dauchy* (1857) 25 Conn. 530; *International Contracting Co. v. United States* (1911) 47 Ct. Cl. 158; see *Shinn v. Bodine* (1869) 60 Pa. 182, 185. It has been held that where the price was to be paid in a lump sum, the contract was entire. *Collins v. Frazier* (1919, Ga.) 98 S. E. 188; *Pitcairn v. Phillip-Hiss Co.* (1902, D. Pa.) 113 Fed. 492. Where the performance consists of separate and distinct items and the price is apportioned to each, the contract has usually been construed as severable. *Amsler v. Bruner* (1912) 173 Ill. App. 337; *Parkersburg & Marietta Sand Co. v. Smith* (1915) 76 W. Va. 246, 85 S. E. 516. But the fact that the price is apportioned is not conclusive. *Steere v. Formilli* (1918, Calif.) 175 Pac. 806; *Grassman v. Bonn* (1880, Ch.) 32 N. J. Eq. 43. In the instant case the express stipulation that the contractor should bear the risk of loss of work and materials, taken with the fact that the parties seem to have contemplated a complete sea-wall, justifies the holding that the contract is entire.

CONTRACTS—ILLEGALITY—OPTION CONTRACTS FOR FUTURE DELIVERY.—In consideration of $80.00 the defendant gave to the plaintiff an option on 8,000 bushels of corn for December delivery at $1.40 per bushel. On the plaintiff's election to purchase the corn, the defendant refused to deliver, claiming that it was a gaming contract and therefore illegal. The plaintiff brought an action for breach of contract for the sale and delivery of the corn. *Held,* that he should recover. *Yontz v. McVean* (1920, Mo.) 217 S. W. 1000.

Contracts in which the parties intend to wager on the future price of a commodity with the understanding that no delivery is to be made, but that there shall be a mere "settlement of differences," are illegal and unenforceable. *Raymond v. Parker* (1911) 85 Conn. 694, 81 Atl. 1030; *Lamson v. Bane* (1913, C. C. A. 8th) 206 Fed. 253. The illegality of such transactions is determined by whether or not there was an actual intent on the part of both the plaintiff and the defendant to deliver, make payment for, and receive the commodities. See *Graff v. Moench* (1913) 181 Ill. App. 127, 130; see *Rogers v. Marriott* (1900) 59 Neb. 759, 772, 82 N. W. 21, 24. Option contracts in which there is actually an intention to deliver if the option is exercised, are likewise valid. *Schmidt v. Marine Milk Condensing Co.* (1915) 197 Ill. App. 279; *Waters-Pierce Oil Co. v. Progressive Gin Co.* (1916) 59 Okla. 262, 159 Pac. 349. An option contract for future delivery, as in the instant case, is valid even where the seller does not at the time of giving the option own the goods. *Wiggin v. Federal Stock & Grain Co.* (1905) 77 Conn. 507, 59 Atl. 607; *Sawyer Wallace Co. v. Taggart* (1879, Ky.) 14 Bush, 727. If one party intends actual delivery, but the other intends a "settlement of differences" only, the contract may be enforced at the option of the one intending actual delivery. *Merriam & Millard Co. v. Cole* (1917, Tex. Civ. App.) 198 S. W. 1054; *Donovan v. Daiber* (1900) 124 Mich. 49, 82 N. W. 848; *contra, Elmore-Schultz v. Stonebraker* (1919, Mo.) 214 S. W. 216. A few courts have tried to lay down general rules for determining this intention to deliver. The majority of these courts hold that where nothing is said about actual delivery, the presumption is that the contract is legal and the burden of proof is upon the defendant to show its illegality. See *Lamson Bros v. Mensen* (1919, Iowa) 174 N. W. 689; see *Miller Co. v. Klovstad* (1905) 14 N. D. 435, 105 N. W. 164; see Anson, *Contract* (3d Am. ed. by Corbin, 1919) 281, note; *contra, Pate v. Wilson Bros. Mercantile Co.* (1919, Tex. Civ. App.) 209 S. W. 187. It